

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1412(a)(20))

**§ 300.282 Opportunity to participate; comment period.**

(a) The SEA shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The policies and procedures must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

(Authority: 20 U.S.C. 1412(a)(20))

**§ 300.283 Review of public comments before adopting policies and procedures.**

Before adopting the policies and procedures, the SEA shall—

(a) Review and consider all public comments; and

(b) Make any necessary modifications in those policies and procedures.

(Authority: 20 U.S.C. 1412(a)(20))

**§ 300.284 Publication and availability of approved policies and procedures.**

After the Secretary approves a State's policies and procedures, the SEA shall give notice in newspapers or other media, or both, that the policies and procedures are approved. The notice must name places throughout the State where the policies and procedures are available for access by any interested person.

(Authority: 20 U.S.C. 1412(a)(20))

## Subpart C—Services

### FREE APPROPRIATE PUBLIC EDUCATION

**§ 300.300 Provision of FAPE.**

(a) *General.* (1) Subject to paragraphs (b) and (c) of this section and § 300.311, each State receiving assistance under this part shall ensure that FAPE is available to all children with disabilities, aged 3 through 21, residing in the State, including children with disabilities who have been suspended or expelled from school.

(2) As a part of its obligation under paragraph (a)(1) of this section, each State must ensure that the requirements of § 300.125 (to identify, locate, and evaluate all children with disabilities) are implemented by public agencies throughout the State.

(3)(i) The services provided to the child under this part address all of the child's identified special education and related services needs described in paragraph (a) of this section.

(ii) The services and placement needed by each child with a disability to receive FAPE must be based on the child's unique needs and not on the child's disability.

(b) *Exception for age ranges 3–5 and 18–21.* This paragraph provides the rules for applying the requirements in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21 within the State:

(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(4) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make FAPE available to a child with a disability in one of these age groups if—

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(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group; or

(ii) The requirement is inconsistent with a court order that governs the provision of free public education to children with disabilities in that State.

(c) *Children aged 3 through 21 on Indian reservations.* With the exception of children identified in §300.715(b) and (c), the SEA shall ensure that all of the requirements of Part B of the Act are implemented for all children with disabilities aged 3 through 21 on reservations.

(Authority: 20 U.S.C. 1412(a)(1), 1411(i)(1)(C), S. Rep. No. 94–168, p. 19 (1975))

## § 300.301 FAPE—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(c) Consistent with §§300.342(b)(2) and 300.343(b), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

(Authority: 20 U.S.C. 1401(8), 1412(a)(1))

## § 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(10)(B))

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## § 300.303 Proper functioning of hearing aids.

Each public agency shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(Authority: 20 U.S.C. 1412(a)(1))

## § 300.304 Full educational opportunity goal.

Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency.

(Authority: 20 U.S.C. 1412(a)(2))

## § 300.305 Program options.

Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(a)(2), 1413(a)(1))

## § 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(a)(1))

## § 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless—

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1412(a)(25), 1412(a)(5)(A))

**§ 300.308 Assistive technology.**

(a) Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5–300.6, are made available to a child with a disability if required as a part of the child's—

(1) Special education under § 300.26;

(2) Related services under § 300.24; or

(3) Supplementary aids and services under §§ 300.28 and 300.550(b)(2).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

(Authority: 20 U.S.C. 1412(a)(12)(B)(i))

**§ 300.309 Extended school year services.**

(a) *General.* (1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§ 300.340–300.350, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) *Definition.* As used in this section, the term *extended school year services* means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

(Authority: 20 U.S.C. 1412(a)(1))

**§ 300.310 [Reserved]**

**§ 300.311 FAPE requirements for students with disabilities in adult prisons.**

(a) *Exception to FAPE for certain students.* Except as provided in § 300.122(a)(2)(ii), the obligation to make FAPE available to all children with disabilities does not apply with respect to students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility—

(1) Were not actually identified as being a child with a disability under § 300.7; and

(2) Did not have an IEP under Part B of the Act.

(b) *Requirements that do not apply.* The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(1) The requirements contained in § 300.138 and § 300.347(a)(5)(i) (relating to

participation of children with disabilities in general assessments).

(2) The requirements in §300.347(b) (relating to transition planning and transition services), with respect to the students whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(c) *Modifications of IEP or placement.*

(1) Subject to paragraph (c)(2) of this section, the IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements of §§300.340(a) and 300.347(a) relating to IEPs, and 300.550(b) relating to LRE, do not apply with respect to the modifications described in paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1414(d)(6))

**§ 300.312 Children with disabilities in public charter schools.**

(a) Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) If the public charter school is an LEA, consistent with §300.17, that receives funding under §§300.711–300.714, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(c) If the public charter school is a school of an LEA that receives funding under §§300.711–300.714 and includes other public schools—

(1) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(2) The LEA must meet the requirements of §300.241.

(d)(1) If the public charter school is not an LEA receiving funding under §§300.711–300.714, or a school that is part of an LEA receiving funding under §§300.711–300.714, the SEA is responsible

for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity; however, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.600.

(Authority: 20 U.S.C. 1413(a)(5))

**§ 300.313 Children experiencing developmental delays.**

(a) *Use of term developmental delay.* (1) A State that adopts the term *developmental delay* under §300.7(b) determines whether it applies to children aged 3 through 9, or to a subset of that age range (e.g., ages 3 through 5).

(2) A State may not require an LEA to adopt and use the term *developmental delay* for any children within its jurisdiction.

(3) If an LEA uses the term *developmental delay* for children described in §300.7(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.

(4) If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.

(b) *Use of individual disability categories.* (1) Any State or LEA that elects to use the term *developmental delay* for children aged 3 through 9 may also use one or more of the disability categories described in §300.7 for any child within that age range if it is determined, through the evaluation conducted under §§300.530–300.536, that the child has an impairment described in §300.7, and because of that impairment needs special education and related services.

(2) The State or LEA shall ensure that all of the child's special education and related services needs that have been identified through the evaluation described in paragraph (b)(1) of this section are appropriately addressed.

(c) *Common definition of developmental delay.* A State may adopt a common definition of *developmental delay* for use

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in programs under Parts B and C of the Act.

(Authority: 20 U.S.C. 1401(3)(A) and (B))

### EVALUATIONS AND REEVALUATIONS

#### § 300.320 Initial evaluations.

(a) Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services under Part B of the Act—

(1) To determine if the child is a “child with a disability” under § 300.7; and

(2) To determine the educational needs of the child.

(b) In implementing the requirements of paragraph (a) of this section, the public agency shall ensure that—

(1) The evaluation is conducted in accordance with the procedures described in §§ 300.530–300.535; and

(2) The results of the evaluation are used by the child’s IEP team in meeting the requirements of §§ 300.340–300.350.

(Authority: 20 U.S.C. 1414(a), (b), and (c))

#### § 300.321 Reevaluations.

Each public agency shall ensure that—

(a) A reevaluation of each child with a disability is conducted in accordance with § 300.536; and

(b) The results of any reevaluations are addressed by the child’s IEP team under §§ 300.340–300.349 in reviewing and, as appropriate, revising the child’s IEP.

(Authority: 20 U.S.C. 1414(a)(2))

#### §§ 300.322–300.324 [Reserved]

### INDIVIDUALIZED EDUCATION PROGRAMS

#### § 300.340 Definitions related to IEPs.

(a) *Individualized education program.* As used in this part, the term *individualized education program* or *IEP* means a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.341–300.350.

(b) *Participating agency.* As used in § 300.348, *participating agency* means a State or local agency, other than the public agency responsible for a stu-

dent’s education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(11), 1412(a)(10)(B))

#### § 300.341 Responsibility of SEA and other public agencies for IEPs.

(a) The SEA shall ensure that each public agency—

(1) Except as provided in §§ 300.450–300.462, develops and implements an IEP for each child with a disability served by that agency; and

(2) Ensures that an IEP is developed and implemented for each eligible child placed in or referred to a private school or facility by the public agency.

(b) Paragraph (a) of this section applies to—

(1) The SEA, if it is involved in providing direct services to children with disabilities, in accordance with § 300.370(a) and (b)(1); and

(2) Except as provided in § 300.600(d), the other public agencies described in § 300.2, including LEAs and other State agencies that provide special education and related services either directly, by contract, or through other arrangements.

(Authority: 20 U.S.C. 1412(a)(4), (a)(10)(B))

#### § 300.342 When IEPs must be in effect.

(a) *General.* At the beginning of each school year, each public agency shall have an IEP in effect for each child with a disability within its jurisdiction.

(b) *Implementation of IEPs.* Each public agency shall ensure that—

(1) An IEP—

(i) Is in effect before special education and related services are provided to an eligible child under this part; and

(ii) Is implemented as soon as possible following the meetings described under § 300.343;

(2) The child’s IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

(3) Each teacher and provider described in paragraph (b)(2) of this section is informed of—